HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1300 of 2006

Between:

The General Manager, District Industries Centre, Adilabad and another.

... Appellants

And

M/s.G.S. Oils Ltd., rep. by its Managing Director Sri Manoj Makharia.

... Respondent

Counsel for the appellants: Government Pleader for Industries and Commerce

Counsel for the respondent : Shri T. Suryakaran Reddy

::JUDGMENT::

March 26, 2007

Per G.S. Singhvi, CJ

Whether the delay in the processing of the application made by the respondent for availing the benefit of incentives and concessions in terms of G.O.Ms.No.333, dated 14-11-2003 could be made a ground for declining it the benefit of the policy framed by the government is the question, which arises for determination in this

appeal filed by General Manager, District Industries Centre, Adilabad (appellant No.1) and another for setting aside order dated 10-8-2006 passed by the learned Single Judge in Writ Petition No.21292 of 2005.

The respondent is a food processing industry. In furtherance of the policy announced by the Government of India for accelerating the growth of food processing industries throughout the country, the Government of Andhra Pradesh issued G.O.Ms.No.333, Industries & Commerce (C & EP) Department, dated 14-11-2003 for grant of incentives and concessions to the existing food processing units. The salient features of the policy framed by the Government of Andhra Pradesh were:

"Incentives and concessions:

i) The Government of Andhra Pradesh will give an additional 10% of the subsidy assistance being given by the Government of India to the agro food processing units.

ii) Power is a very important cost factor in food processing units. To help newly established units during the nascent stage, Government will extend electricity tariff at concessional rate or Rs.1.75 per unit for a period of five years and the deferential tariff (i.e. between actual cost as decided by the A.P.E.R.C. and the concessional rate fixed by Government) is paid to the concerned DISCOM as subsidy.

iii) The 50% stamp duty for land registration and documentation duty paid by the unit shall be refunded as subsidy from Government in Industries Department.

iv) A 5% interest subsidy will be given on total working capital loan taken by new food processing industrial units in food parks subject to a maximum of Rs.2.00 lakhs per unit for a period of one year. In other areas of the state, a maximum of Rs.1.00 lakh per unit for a period of one year.

v) To encourage use of mechanized grading/sorting/sizing machines/packing especially for exportable products, a subsidy of 50% will be given on equipment with a ceiling of Rs.3.00 lakhs per beneficiary on primary processing activities, like grading, sorting, packing, washing at the farm gate.

vi) To encourage the use of dries which will help in getting

better value addition for perishable produce a subsidy of 25% will be given on the cost of equipment will be given subject to a ceiling of Rs.2.00 lakhs per beneficiary.

vii) All food processing Industries shall be exempted from payment of market cess, on the procurement of raw material for the industry. On the turn over of the value of finished produce for exports, a development cess of 0.5% would be charged and the amount will be exclusively utilized for improving the infrastructure for the food processing industry.

viii) The sales tax on inputs, other than fuel, used by the Food Processing Industry, the tax paid shall be adjusted against the tax payable, on the sales of the finished products sold within the State or in the course of inter-state trade on which CST is leviable. Further in respect of exports the input tax shall be refunded by Industries Department."

For giving effect to the above noted policy, the Government of Andhra Pradesh issued G.O.Ms.No.55, Industries & Commerce (C & EP) Department, dated 5-3-2004 and laid down operational guidelines. Paragraphs 7 and 8 of that G.O. read as under:

7.0 PROCEDURE FOR CLAIMING INCENTIVES:

7.1 . All the new eligible food processing industrial units shall submit their claim applications in the prescribed proforma at Annexure-II for sanction of following incentives within six months from the date of commencement of the commercial production, and existing food processing industries should submit their applications with relevant documents, within six months from the date of issue of G.O., to the Commissioner of Industries/General Manager, District Industries Centre concerned as the case may be.

1. Additional 10% investment subsidy on Central Grand.
2. Reimbursement of 50% Registration charges/stamp duty.
3. Interest subsidy for all Food Processing Industries.
4. 25% Air Freight subsidy.
5. Reimbursement of input tax on export made.
6. Subsidy for mechanized grading/sorting/sizing machines/packaging equipment especially for exportable products.
7. Subsidy for Dryer Equipments.

8. Interest subsidy for Food Processing Industries.

7.2. The submission of application may also be done electronically and hand copies of documents sent by post. All the eligible New Food Processing Industries shall obtain clearances/permission through single window and furnish them along with claim application.

7.3. All SSI & Tiny food processing Industries with investment limit up to Rs.15.00 lakhs on the fixed capital investment shall submit their claim applications direct to the General Manager, District Industries Centre concerned. (GO.Ms.No.296, Industries & Commerce (IP) Department dated 22.8.98).

7.4. All Large & Medium SSI Food processing Industries with investment limit above Rs.15.00 lakhs on the fixed capital investment shall submit their claim applications direct to the Commissioner of Industries, A.P.Hyderabad. (GO.Ms.No.296, Industries & Commerce (IP) Department dated 22.8.98).

7.5. All belated applications will be treated as belated claims as given below:

In respect of applications made after due date but not exceeding six months i.e., below one year from DCP, 50% of the investment subsidy will be allowed. Applications made after one year from the DCP, no investment subsidy will be allowed.

7.6 POWER TARIFF:

7.6.1 The eligible food processing industries having industrial power service connection will be issued an eligibility certificates for availing power tariff at concessional rate at Rs.1.75 ps. per unit for a period of 5 years. The differential tariff between actual cost as decided by the APERC and the concessional rate fixed by the Government shall be paid to the concerned DISCOMS directly.

7.6.2 The Government direct the APTRANSCO/ DISCOMs to collect concessional power tariff at Rs.1.75 ps. per unit and the difference amount between the tariff fixed by the APERC and the concessional tariff be claimed from the Industries Department on quarterly basis in respect of eligible food processing industries for which eligibility certificates have

been issued by the Industries Department for availing concessional power tariff for a period of 5 years.

7.6.3 The concerned DISCOMs shall claim reimbursement of the differential amount from the Commissioner of Industries in the prescribed proforma at Annexure -III on quarterly basis.

7.6.4 After receipt of the claims from concerned DISCOMs the Convenor of the SLC will place these claims before the SLC for release of amounts to DISCOMS.

7.6.5 All eligible food processing industries shall apply to the concerned General Manager, DIC for obtaining eligibility certificate for availing concessional power tariff in the prescribed proforma as at Annexure - IV.

7.6.6 After receipt of the applications the General Manager, DIC & Convenor, District Level Committee will place these applications before DLC for issue of Eligibility Certificate. After approval of the DLC, the GM, DIC will issue the Eligibility Certificate in the prescribed proforma at Annexure – V.

7.6.7 After issue of Eligibility Certificate the unit holder will give a half yearly self-certification in the form given in Annexure-VI.

7.6.7. The concerned General Manager, DIC or an accredited agency will do a quarterly / half-yearly post verification to confirm that the power concession is being used for the purpose for which the concession claimed by the unit and concession is not obtained by the unit by misrepresentation of fact and the units have not furnished false information. In such cases the General Manager, with the approval of the District Level Committee, shall recover the power concession with interest.

7.7 MARKETING CESS:

7.7.1 The market cess will be exempted for all food processing units except rice mills.

7.7.2 All eligible food processing industries should apply to the concerned General Manager, District Industries Centre for obtaining eligibility certificate for exemption from payment of

Market cess in the prescribed proforma as at Annexure – VII.

7.7.3 After receipt of the applications for exemption of the Market cess, the General Manager, District Industries Centre & Convener, District Level Committee will place these applications before DLC for issue of Eligibility Certificate. After approval of the DLC, the GM, District Industries Centre will issue the Eligibility Certificate in the prescribed proforma at Annexure –VIII.

7.7.4 The Secretary, Market Committee will permit all the eligible Food Processing units for exemption from payment of Market cess on the purchased raw material as mentioned in the eligibility certificate (EC).

7.7.5 The Marketing department or an accredited agency or any other agency nominated by Government will do a quarterly / half-yearly post verification to confirm that the exemption is being used for the purpose of which it was given incentives are not obtained by the units by misrepresentation and the units have not furnished false information. In such cases the market cess may be recovered with interest by the Marketing Department subject to approval of the District Level Committee.

8.0 PROCEDURE OF SANCTION OF INCENTIVES:

8.1 On receipt of application claiming incentives from the industrial units concerned for sanction of incentives under the scheme, the Member-Secretary of the State / District Level Committee will prepare the agenda notes in each case in the form prescribed for placing for approval before the respective Committees for obtaining sanction. After sanction a sample checking will be done by the GMs, accredited agencies or other officers. The samples will be selected in a manner to ensure that all units claiming incentives / subsidies are covered once a year. Pre inspections will be avoided while sanctioning incentives.

8.2 If any doubt arises on the claims submitted by the food processing industries, the concerned DLC / SLC can refer the same to the Multi Disciplinary Committee or the accredited agency for verification and certification of the

genuineness of the particulars furnished by the industrial units. Progressively the scrutiny will be done only by accredited agencies.

8.3 The COI will empanel accredited agencies to undertake the work of certifying the food processing industries eligible for investment subsidy, etc.

With a view to avail the benefit of incentives and concessions in terms of the policy framed by the State Government, the respondent submitted an application dated 24-4-2004 to the competent authority, but the same was not processed in view of the instructions issued by the office of the Commissioner of Industries, Hyderabad vide Memo No.20/1/2003/918, dated 3-2-2005. After waiting for one year and almost five months, the respondent filed Writ Petition No.21292 of 2005 for issue of a mandamus to the non-petitioners (the appellants herein) to consider and dispose of the application made by it for grant of eligibility certificate for concessional power tariff, exemption of market cess and other incentives in terms of G.O.Ms.No.333, dated 14-11-2003 read with G.O.Ms.No.55, dated 5-3-2004.

In the affidavit filed by him, Shri Manoj Makharia, Managing Director of the respondent referred to the two G.Os. and pleaded that on account of non-issue of eligibility certificate, the unit was being forced to pay market fee and regular tariff. He also referred to letter dated 7-10-2004 sent by the Principal Secretary to Government, Industries and Commerce Department to the President, Federation of Adilabad Chamber of Commerce & Industry informing that the State Level Committee on Food Processing Policy had made some recommendations for issue of eligibility certificates and the same is under active consideration, and pleaded that the inaction on the part of the non-petitioners is contrary to the object of the policy decision taken by the Government of India to uplift the agricultural and industrial sectors in general and the food processing units in particular.

In the counter-affidavit filed on behalf of the non-petitioners by Sri Govathoti Rajendra Prasad, General Manager, District Industries Centre, Adilabad, it was averred the petitioner's application was kept pending in view of the instructions issued by the Commissioner of Industries and the same was rejected in view of the new policy issued vide G.O.Ms.No.179, dated 22-6-2005 and the petitioner was informed about this vide letter No.A/665/04, dated 28-9-2005.

The learned Single Judge referred to the relevant provisions of G.O.Ms.No.333, dated 14-11-2003, G.O.Ms.No.55, dated 5-3-2004, G.O.Ms.No.179, dated 22-6-2005, the judgments of the Supreme Court in **Punjab Communication Limited v. Union of India**[1], **State of Himachal Pradesh v. Ganesh Wood Products**[2], **Commissioner of Central Excise v. M.P.V. Engg. Industries**[3] and of this Court in **P.P.P. Industries, Nandyal v. The Commission of Industries**[4] and order dated 13-6-2006 passed by another learned Single Judge in Writ Petition No.1954 of 2005 – **M/s.Sukhjit Starch Mills Limited v. Agricultural Market Committee, Nizamabad** and held as under:

> "It is no doubt true that in the light of the clause referred to supra in G.S.Ms.No.55 , the learned Judge came to the conclusion that giving eligibility certificate as required under G.O.Ms.No.333 dated 14.11.2003 is essential for getting the incentives. The writ petitioners made applications on 29-05-2004, 24-04-2004 and
> 06-05-2004 respectively. It is not the case of the respondents that the policy decision promulgated under G.O.Ms.No.179 superseding the prior G.Os would have any retrospective operation. Even otherwise, the applications were made as per G.Os, the petitioners were under the fond hope and expectation that they would be entitled to these incentives and nothing was heard from the side of the respondents side as specified in the respective affidavits filed in support of the writ petitions. In the light of the view expressed by the Apex Court i n **Commissioner of Central Excise Vs. M.P.V.& Engineering Industries,** { (2003) 5 SCC 333 } and also in the

light of the view expressed by the learned judge of this court in writ petition No.1954 of 2005 dated 30-06-2006 (W.P.No.1954 of 2005, dt. 13-6-2006) which is latter in point of time wherein reliance was placed on the decision of the Division Bench of this Court in **P.P.R. Industries V. Commissioner of Industries** (92 STC 110), this court is of the considered opinion that the petitioners are entitled to the incentives or benefits as per G.O.Ms.No.333 dated 14-11-2003 and G.O.Ms.No.55 dated 5-3-2004 till the date of issuance G.O.Ms. No.179 from the respective dates of the applications dated 29-05-2004, 24-04-2004 and 06-05-2004 respectively."

The learned Government Pleader for Industries and Commerce argued that the doctrine of promissory estoppel is not applicable to the case of the respondent and the direction given by the learned Single Judge is liable to be set aside because in view of the revised policy, the respondent is not entitled to the benefit of incentives and concessions. He further argued that the State has the absolute discretion to withdraw the exemption notification and in view of the new policy contained in G.O.Ms.No.179, dated 22-6-2005, the respondent is not entitled to the benefit of incentives and concessions envisaged under G.O.Ms.No.333, dated 14-11-2003. He emphasized that with the issue of new policy, the old policy will be deemed to have been superceded and the learned Single Judge gravely erred by directing the appellants to extend the benefit of incentives and concessions in terms of G.O.Ms.No.333, dated 14-11-2003.

Shri T. Suryakaran Reddy, learned counsel for the respondent argued that the policy contained in G.O.Ms.No.179, dated 22-6-2005 is not retrospective and, therefore, the same could not have been invoked by the appellants for denying the benefit of incentives and concessions admissible to his client in terms of the policy contained in G.O.Ms.No.333, dated 14-11-2003. Shri Reddy submitted that the fresh policy enshrined in G.O.Ms.No.179, dated 22-6-2005 is not applicable to the respondent's case and, therefore, the

learned Single Judge did not commit any error by directing the appellants to give benefit of incentives and concessions to it in accordance with the old policy. Learned counsel pointed out that the order passed by the learned Single Judge in Writ Petition No.1954 of 2005 – **M/s.Sukhjit Starch Mills Limited v. The Agricultural Market Committee, Nizamabad** has been confirmed by the Division Bench in Writ Appeal No.102 of 2007 – **The Agricultural Market Committee, Nizamabad v. M/s.Sukhjit Starch Mills Limited** decided on 1-2-2007 and argued that the respondent is legally entitled to the benefit of the concessions and exemptions envisaged under G.O.Ms.No.333, dated 14-11-2003.

We have given serious thought to the respective arguments and carefully scrutinised G.O.Ms.No.333, dated 14-11-2003, G.O.Ms.No.55, dated 5-3-2004 and G.O.Ms.No.179, dated 22-6-2005.

Before proceeding further, we deem it proper to notice paragraphs 1 to 5 of G.O.Ms.No.179, dated 22-6-2005, copy of which was produced by the learned Government Pleader. The same read as under:

> "In the GO first read above, orders were issued on Food Processing Policy of Andhra Pradesh State and extending various incentives and concessions to the Food Processing Industries in the State. In the GO second read above operational guidelines were also issued for implementation of the Food Processing Policy in the State.
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> 2. The Commissioner of Industries, Andhra Pradesh, in the single file third read above has reported that some of the Food Processing Industries in the State have approached the Hon'ble High Court of Andhra Pradesh. Keeping in view of the all consequences in view, the Commissioner of Industries, has requested the Government to consider the earlier Policy and issue necessary fresh orders on the Food Processing Policy of the Andhra Pradesh.
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> 3. Government, after careful examination of the matter in detail, have decided to evolve a fresh Food Processing Policy of Andhra Pradesh State by superseding the orders

issued in the GO first read above and the operational guidelines issued in the GO second read above.

4. Accordingly, in supersession of the orders issued in GO first read above and consequent operational guidelines issued in GO second read above, approved the fresh State Policy on “Food Processing Industries” as detailed below:

1. Coverage:

The Policy will cover the following activities and areas:

HORTICULTURE:

Fruit & Vegetable processing

Fruit based ready to serve beverages

Tissue culture Laboratories/Green houses/Green house nurseries/Mushroom Laboratories/Seed production units based on modern scientific methods to meet industry standards.

Wine making

AGRICULTURE:

Food grain milling/processing

Using modern technology and equipment (except Rice Mills)

Alcohol for blending with fuels

ANMIMAL HUSBANDRY

Dairy products

Processing of poultry, eggs, meat and meat products

FISHERIES

Fish processing including shrimps

AGRO FOOD PROCESSING INDUSTRIES:

Bread, Oilseed meals (edible), breakfast foods, biscuits, confectionery, including cocoa processing and chocolate, oil expellers and refining, malt extract, protein isolates, high protein foods, weaning foods, extruded/other ready to eat food products and all other processed foods (excluding non packed food items served in Hotels and Restaurants of all categories)

ALLIED INDUSTRIES:

Cold Storage unit

Refrigerated Transport vehicles containers; (excluding second hand Refurbished vehicles/containers)

Units manufacturing food grade packaging materials for food processing Industry

Units engaged in packaging, canning and bottling of process foods.

Units manufacturing additives/preservatives/

colors/fragrances for the processed food industry.
Biotechnology industries

2. INCENTIVES AND CONCESSIONS:

Reimbursement of cost of power for all eligible units shall be allowed @Re.1.00 per unit as against Re.0.75 per unit as provided for the other eligible industries under IIPP.

5. The Fresh Food Processing Policy will come into effect from 01-04-2005. The reimbursement of cost of power shall be extended for a period of five years from the date 01-04-2005. The Food Processing unit those, which have gone into commercial production after 14-11-2003, shall be eligible for reimbursement of cost of power."

The State's power to levy tax, fees, cess etc. on the manufacture, import and export, sale of goods and services is unquestionable. Equally unquestionable is the State's power to grant incentives, concessions and exemptions from payment of tax, fees, cess etc. The last mentioned power can be exercised by the State in accordance with the statute, if any and even otherwise. The State can also withdraw the benefit of incentives, concessions and exemptions and the person who has availed the benefit of concession or exemption cannot ordinarily complain against such withdrawal except when such withdrawal is arbitrary, unreasonable, unfair and contrary to public interest.

In **Bannari Amman Sugars Ltd. v. CTO**[5], the Supreme Court recognized the right of the State to change its policy and held:

> "While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair

play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualised than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness."

In **S.L. Srinivasa Jute Twine Mills (P) Ltd. v. Union of India**[6], the Supreme Court held that the retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication.

In **MRF Ltd., Kottayam v. Asst. Commissioner (Assessment)**[7], the Supreme Court ruled against the retrospectivity of the subsequent notification issued by the Government of Kerala withdrawing certain exemptions and held:

> "In any case MRF's accrued right to exemption was not taken away or in any way affected by the amending Notification SRO No. 38/98; which merely applied to those units which were established or expanded after 15-1-1998. If an industrial unit had been set up prior to 15-1-1998 and had also commenced commercial production prior to 15-1-1998 then the amending Notification SRO No. 38/98 would have no retrospective application at all. Notification SRO No. 38/98 is prospective in operation which is evident by its mere reading as it specifically mentioned therein that:
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> "The notification shall be deemed to have come into force with effect from the 1st day of January, 1998."

Their Lordships of the Supreme Court referred to the judgment in **S.L. Srinivasa Jute Twine Mills (P) Ltd. v. Union of India** (supra) and held that the provisions of the Act or notification are always prospective in operation unless the express language renders it

otherwise making it effective with retrospective effect.

In the light of the above, we shall now consider whether the new policy contained in G.O.Ms.No.179, dated 22-6-2005 has the effect of depriving the respondent of its right to claim incentives, concessions and exemptions in terms of G.O.Ms.No.333, dated 24-11-2003.

A plain reading of paragraph 5 of G.O.Ms.No.179, dated 22-6-2005 makes it clear that the policy contained therein is operative from 1-4-2005 and not with effect from an earlier date. There is nothing in the language of that G.O. from which implied retrospectivity of the new policy can be inferred. Therefore, rejection of the application made by the respondent for grant of incentives and concessions in terms of the policy notified vide G.O.Ms.No.333, dated 14-11-2003 solely on the ground that the government has announced new policy cannot but be termed as per se arbitrary, unreasonable and unjustified.

In our considered view, the failure of the competent authority to process and decide the application made by the respondent for grant of incentives and concession in terms of G.O.Ms.No.333, dated 14-11-2003 cannot operate to the latter's disadvantage. The laxity on the part of the administrative apparatus of the State in deciding the application made by the respondent could not be a ground in denying it the benefit of the policy enshrined in G.O.Ms.No.333, dated 14-11-2003 and the learned Single Judge rightly issued mandamus for extending the benefit of the incentives and concessions to the respondent in terms of the old policy.

In **CCE v. M.P.V. & Engg. Industries** (supra), their Lordships of the Supreme Court considered the question whether delay in the disposal of the application made by the respondent for grant of exemption in terms of notification dated 1-3-1986 issued by the Government of India under Rule 8 (1) of the Central Excise Rules

could justify denial of the exemption.

The facts of that case were that the respondent was engaged in the business of manufacturing cooling towers. It commenced production with effect from June 1986. On 3-12-1986 it applied to the Director of Industries, West Bengal for grant of registration as an SSI unit. The registration certificate was issued on 31-3-1988. The respondent claimed the benefit of Exemption Notification No.175/86-CE dated 1-3-1986 w.e.f. the date of the application for registration and contended that it should not be deprived of the benefit of such exemption merely because on account of administrative delays the registration certificate was issued much later. The CCE held that the benefit of the exemption could be granted only from the date of issuance of the registration certificate. He further observed that the respondent had applied for provisional registration on 3-12-1986 which was not granted to it. Later, a permanent registration certificate as a small-scale industrial unit was issued to it on 31-3-1988 in response to another application made for grant of permanent registration. Thus, the respondent was given permanent registration pursuant to a fresh application made subsequently, and not pursuant to its earlier application. CEGAT held that the respondent was entitled to exemption from the date of the application. On appeal, the Supreme Court approved the decision of CEGAT and held as under:

1) Paragraph 4 of the notification does not in terms specify the date with effect from which the certificate becomes effective. We have therefore to consider the notification as a whole to ascertain its true intent. So considered it would appear that with a view to give some relief to small scale industries, certain exemptions were provided under the said notification. The exemption was meant to benefit an industry which qualified as a small scale industry. With a view to avoid any controversy as to their status as a small scale industry, the notification recognised the certificate issued by the Director of Industries to this effect. Once it is

found by the Director of Industries that the industry qualifies as a small scale industrial unit, he is bound to issue the certificate of registration. However, no time bound procedure has been provided. It may at times take several months or years for the competent authority to issue the certificate envisaged in paragraph 4 of the notification. In such a situation can it be said that the small scale industry should be deprived of the benefit which would have accrued to it had the application for registration been disposed of immediately. In our view it would be unreasonable to deprive a small scale industry of the benefit under the notification particularly when the notification does not in terms provide that the certificate shall become effective from the date of its issuance.

2) No doubt, so far the authorities are concerned they must examine the claim of the respondent to be a small scale industry strictly and in accordance with the rules. However, once it is found that the industry qualifies as a small scale industry, in the matter of grant of exemption a liberal approach is permissible if it does no violence to the language of the notification. In a case of this nature it is only reasonable to take the view that the benefit of exemption will accrue to a unit found to be a small scale industrial unit from the date on which the application was made for grant of registration certificates. Such a unit should not be deprived of the benefit to which it is otherwise entitled as a small scale industrial unit merely because the authorities concerned took their own time in disposing of the application. We therefore, agree with the majority view of the Tribunal and hold that the benefit of exemption under the notification in question should be extended to the respondent with effect from the date on which the application for grant of registration was made by it before the competent authority.

In our opinion, the ratio of the aforementioned judgment is squarely attracted in the respondent's case.

We are further of the view that once the entitlement of a similarly situated person to get benefit of incentives and exemption has been upheld by this Court in the case of **M/s.Sukhjit Starch Mills Ltd.** (supra), there can be no justification to deny similar benefit to the

respondent.

The matter also deserves to be examined from the point of view of discrimination. In terms of the policy notified vide G.O.Ms.No.333, dated 14-11-2003, a number of eligible food processing units had applied for grant of incentives and concessions. Some of these applications were processed and disposed of by the competent authority without delay and those units which were found eligible were extended the benefit of the incentives and concessions under various headings. However, other applications like the one made by the respondent were kept pending albeit without any tangible reason and the same were rejected on the premise that the government has announced new policy. In our opinion, the fortuitous factor of keeping the applications pending could not have been made a ground to deny the benefit of incentives and concessions admissible to the eligible applicant in terms of the policy contained in G.O.Ms.No.333, dated 14-11-2003. To put it differently, the respondent could not have been subjected to invidious discrimination simply because the application made by it was not processed by the competent authority expeditiously.

The argument of the learned Government Pleader that the doctrine of promissory estoppel cannot be invoked in a case like the present one sounds attractive, but the same does not have any bearing on the decision of this appeal because, in the petition filed by it, the respondent did not invoke the said doctrine for claiming benefit of the old policy.

However, the direction given by the learned Single Judge for grant of incentives to the respondent is liable to be substituted with a direction that the application made by the respondent for grant of incentives and concessions in terms of G.O.Ms.No.333, dated 14-11-2003 shall be re-considered and, on being found eligible, should be given benefit in terms of that G.O.

In the result, the appeal is dismissed, but the direction given by

the learned Single Judge is modified in the following terms:

> The application made by the respondent for grant of incentives and concessions in terms of G.O.Ms.No.333, dated 14-11-2003 shall be considered by the concerned committee and appropriate decision be taken within a period of one month on its entitlement to receive the benefit of the policy contained in the said G.O. Once the respondent is declared eligible, the competent authority shall issue eligibility certificate so as to entitle it to claim the benefit of incentives and concessions up to 31-3-2005. This exercise shall be completed within a total period of two months.

As a sequel to dismissal of the appeal, WAMP No.2758 of 2006 filed by the appellants for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

March 26, 2007

C.V. NAGARJUNA REDDY, J

svs

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[1] AIR 1996 SC 149
[2] AIR 1999 SC 1801
[3] 2003 (5) SCC 333
[4] 1993 APSTJ Vol. 17 P.91
[5] (2005) 1 SCC 625
[6] (2006) 2 SCC 740
[7] (2006) 8 SCC 702